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January 14, 2002

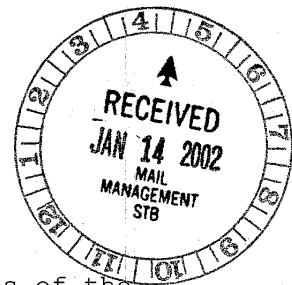
VIA HAND DELIVERY

The Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Case Control Unit  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

ENTERED  
Office of the Secretary

JAN 15 2002

Part of  
Public Record



Re: Finance Docket No. 32760

Dear Mr. Williams:

Enclosed please find an original and 25 copies of the Reply of TXU US Holdings Company to Petition of The Burlington Northern and Santa Fe Railway Company for Clarification (BNSF-98). The enclosed pleading is denominated as TUE-26. A diskette containing the text of this pleading in WordPerfect 8.0 format is also enclosed.

Please acknowledge receipt of this filing by date-stamping and returning to our messenger the enclosed duplicate of this letter and the Reply.

Sincerely,

Christopher A. Mills  
An Attorney for TXU  
US Holdings Company

CAM:lma  
Enclosures

cc: Parties of record per service list

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TUE-26

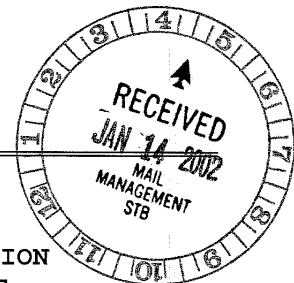
BEFORE THE  
SURFACE TRANSPORTATION BOARD

UNION PACIFIC CORPORATION, UNION  
PACIFIC RAILROAD COMPANY, AND  
MISSOURI PACIFIC RAILROAD COMPANY  
-- CONTROL AND MERGER -- SOUTHERN  
PACIFIC RAIL CORPORATION, SOUTHERN  
PACIFIC TRANSPORTATION COMPANY,  
ST. LOUIS SOUTHWESTERN RAILWAY  
COMPANY, SPCSL CORP., AND THE  
DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY

ENTERED  
Office of the Secretary

JAN 15 2002

Part of  
Finance Docket No. 32760



REPLY OF TXU US HOLDINGS COMPANY TO PETITION  
OF THE BURLINGTON NORTHERN AND SANTA FE  
RAILWAY COMPANY FOR CLARIFICATION (BNSF-98)

OF COUNSEL:

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1224 Seventeenth Street, N.W.  
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Dated: January 14, 2002

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Attorneys for  
TXU US Holdings Company

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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	)	
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-- CONTROL AND MERGER -- SOUTHERN	)	
PACIFIC RAIL CORPORATION, SOUTHERN	)	Finance Docket No. 32760
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COMPANY, SPCSL CORP., AND THE	)	
DENVER AND RIO GRANDE WESTERN	)	
RAILROAD COMPANY	)	
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**REPLY OF TXU US HOLDINGS COMPANY TO PETITION  
OF THE BURLINGTON NORTHERN AND SANTA FE  
RAILWAY COMPANY FOR CLARIFICATION (BNSF-98)**

TXU US Holdings Company, formerly TXU Electric Company ("TUE")<sup>1</sup> files this Reply to the Burlington Northern and Santa Fe's ("BNSF") Petition for Clarification ("BNSF Petition") served in this proceeding on December 21, 2001<sup>2</sup> and in support hereof stats as follows:

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<sup>1</sup>TXU US Holdings Comany has previously participated in this proceeding as Texas Utilities Electric Company.

<sup>2</sup>This BNSF Petition is denominated "BNSF-98".

I.

BACKGROUND

TUE actively participated in the Board proceedings culminating in the Board's issuance of Decision No. 44, served on August 12, 1995.<sup>3</sup> In Decision No. 44, the Board approved, with certain conditions, the merger of rail carriers controlled by Union Pacific Corporation ("UP") and rail carriers controlled by Southern Pacific Rail Corporation ("SP"). One condition imposed by the Board in Decision No. 44 is what is commonly referred to as the "TUE Condition." The TUE Condition directed that the BNSF agreement be modified to permit BNSF and The Kansas City Southern Railway Company ("KCS") to provide coal transportation service to TUE's Martin Lake electric generating station independent of UP/SP. Decision No. 44 state in pertinent part:

*Texas Utilities Electric Company.* We will require that the BNSF agreement be amended to permit KCS and BNSF to interchange TUE coal trains: (a) at Shreveport, for movement by BNSF over SP's line between Shreveport and Tenaha; and (b) at Texarkana, for movement by BNSF over UP's line between Texarkana and Longview. Without this condition, all but one of TUE's PRB routings would involve UP/SP, and the one that would not would be excessively circuitous. We add that, although TUE sought only a Shreveport interchange, we

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<sup>3</sup>Union Pacific Corp. -- Control and Merger -- Southern Pacific R.R., 1 S.T.B. 233 (1995).

are allowing a Texarkana interchange as well, to allow BNSF's routings of TUE coal trains to connect with the additional BNSF trackage rights provided for in the CMA agreement. This also will facilitate BNSF's directional running of these trains.

Id. at 471.

BNSF and KCS now provide unit train coal transportation service from the Wyoming Powder River Basin to TUE's Martin Lake station pursuant to a transportation contract. BNSF and KCS route these coal trains using the TUE Condition trackage rights between Shreveport and Tenaha.

In the Decision No. 44 proceedings, TUE also commented on the trackage rights fee BNSF would be required to pay UP under the BNSF agreement. TUE objected to that fee -- which, at its base level for unit train service exceeded 5 mills per revenue ton-mile -- as excessive. TUE urged the Board to adopt the lower "cost-based" fee levels proposed in the comments filed by the Western Coal Traffic League ("WCTL").<sup>4</sup> The STB rejected this request based upon the Board's conclusion that the compensation terms in the BNSF agreement "will allow BNSF to compete effectively." Decision No. 44, 1 S.T.B. 2d at 471.

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<sup>4</sup>See TUE Comments (TUE-7) at 3 (Filed March 29, 1996).

## II

### BNSF'S PETITION FOR CLARIFICATION

BNSF's Petition For Clarification asks the Board to resolve a dispute between BNSF and UP concerning the application of the BNSF agreement trackage rights fee adjustment mechanism. The gravamen of BNSF's Petition is that UP is applying the mechanism to pass through multi-billion dollar acquisition premium costs, and capital improvement costs, that are not properly included in the adjustment formula. BNSF asserts that pass-through of "[t]hese artificially high costs would render BNSF a less effective competitor" (BNSF Petition at 6). BNSF also asserts that the adjustment issue involves "significant policy issues" and that "it is important that other parties to the UP/SP merger be permitted to submit their views on the issue" (BNSF Petition at 3).

TUE receives transportation service from both UP<sup>5</sup> and BNSF. TUE has no interest in getting in the middle of any parochial disputes between BNSF and UP. However, as BNSF correctly recognizes in its Petition, the fee level dispute raises issues that effect not only BNSF and UP but coal transportation consumers, as well. Simply stated, the level of the trackage rights fee impacts BNSF's service costs which in

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<sup>5</sup>For example, UP currently provides coal transportation service to TUE's Monticello electric generating station.

turn impacts both its and UP's rate offerings to TXU and its other customers served via the involved trackage rights lines.

Increases in suppliers' costs are of particular concern to TUE now. TUE entered a deregulated environment in Texas on January 1, 2002. In order for TUE to effectively compete in the new market place, TUE must carefully monitor its suppliers' costs. TUE strongly opposes any federal action that would arbitrarily increase a supplier's costs, including costs incurred by BNSF under the BNSF agreement. TUE asks the Board to consider these shipper interests in addressing the issues raised by BNSF.<sup>6</sup>

On the merits, TUE cannot speak for BNSF or UP but only for itself. TUE believes that it is fundamentally unfair for UP to require BNSF (and BNSF's customers) to pay a share of the multi-billion dollar premiums UP paid to acquire SP. That responsibility should not fall on BNSF's customers.<sup>7</sup>

Also, as BNSF explains in its Petition, the adjustment methodology set forth in the BNSF agreement, and approved by the STB, was predicated on shipper-sponsored cost based adjustment proposals. TUE supported such proposals and TUE understands that the proponent of these proposals (such as the Western Coal

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<sup>6</sup>It is TUE's understanding that BNSF and UP attempted to solve these issues raised in BNSF's Petition via negotiations, but these negotiations proved unsuccessful.

<sup>7</sup>Similarly, BNSF and its customers should not be required to reimburse UP for any capital costs UP agreed to exclusively fund.

Traffic League) ("WCTL")<sup>8</sup> did not intend for UP purchase premium costs to be included in the BNSF agreement adjustment calculations.

CONCLUSION

For the reasons set forth herein, TUE requests the Board to grant BNSF's Petition.

Respectfully submitted,

OF COUNSEL:

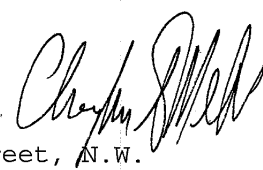
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Attorneys for  
TXU US Holdings Company

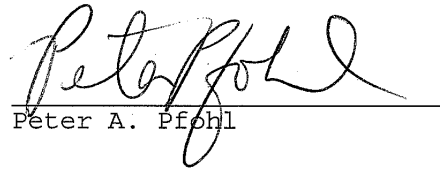
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<sup>8</sup>As noted above, in its prior Comments in this proceeding, TUE adopted and endorsed the WCTL sponsored adjustment proposals.



**CERTIFICATE OF SERVICE**

I certify that I have this 14th day of January, 2002,  
served copies of the foregoing Reply by first class mail, postage  
prepaid, or by more expeditious means on all parties of record in  
Finance Docket No. 32760.

  
Peter A. Pfuhl